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October 8, 1993

Brad Sears
American Civil Liberties Union
Gay and Lesbian Rights Project
132 West 43rd Street
New York, New York 10036

Kate Bolland
Lambda Legal Defense and Education Fund
666 Broadway, 12th Floor
New York, NY 10012

Re: Appeal in Gay Alliance of Genesee Valley v. City Assessor of Rochester, New York

Dear Brad and Kate:

Well, the time has come to start putting fingertips to word processor as amicus (or amici, as the case may be) in this case. The City has just filed its Brief and Demand (meaning that we cannot procrastinate without a stipulation to postpone filing) to file appellee's brief by November 9, 1993. Under this schedule, the appeal will be argued the week of November 29, 1993: post election, but pre-swearing in. Oh well.

I have enclosed a copy of the City's Record and Brief for your use. It is my understanding that you are coordinating the writing of one appeal, tentatively, focusing on both the constitutional discrimination issue and municipal liability under 42 USC §1983. Is this true, or just my imagination? More importantly, please get in touch with me (day: 716-454-6500) or Susan Silverstein (day: 716-325-2520) as soon as possible to let us know what issues you plan to deal with so that we can focus on the other (more mundane) issues.

As I have discussed with you before, to file an amicus in the Appellate Division, Fourth Department, the amicus, on notice to the parties, has to file a motion to file a brief as amicus curie. The next motion date in the Fourth Department is October 18, 1993, so you obviously do not have time (with proper notice) to move for amicus status on that date.

Your option, then, is to file your motion(s) to proceed as amicus simultaneously with the filing of your amicus brief(s), and make motion(s) returnable on Monday, November 29, 1993. OR you can call a staff attorney at the Fourth Department at (716) 858-1190 to see how they think you should proceed.

For your information, I have been told that the Fourth Department does not permit amicus to be heard on oral argument; if you really want to try, though, ask again.

Thanks again for the ACLU's and Lambda's participation in this action. If you have any questions about this stuff, or anything else, feel free to call Susan or me anytime. We look forward to hearing from you soon, and to working together on this project.

Very truly yours,

Ellen M. Yacknin
Susan A. Silverstein

enc.
emy/
c: Susan Silverstein